

CONFIDENTIAL

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Health System Efficiency Act, 2019

EXPLANATORY NOTE

[Explanatory note will be added in later draft]

Bill 2019

An Act to create efficiencies in the health system, to establish the Super Agency and to make consequential and related amendments

[Placeholder for Table of Contents]

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1. This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2. (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

(2) The Schedules to this Act come into force as provided in each Schedule.

(3) If a Schedule to this Act provides that any provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3. The short title of this Act is the *Health System Efficiency Act, 2019*.

Note: I'm proposing to set this up as an omnibus Act with several Schedules. It sounds like there will be more than enough content to justify this approach.

SCHEDULE 1 SUPER AGENCY ACT, 2019

[Placeholder for Table of Contents]

Note: “Super Agency” is used in this draft as a placeholder for the Agency name.

Note: Since things are probably still going to move around, I’ve only bothered numbering the first two sections and Parts. All cross-references to other sections are placeholders. I have tried to highlight them in green and to indicate the headnote of the cross-referenced section in each such cross-reference.

PART I INTERPRETATION AND GENERAL

Interpretation

1. (1) In this Act,

“accountability agreement” means the accountability agreement that the Minister and the Super Agency are required to enter into under subsection 26 (1) (“entente de responsabilisation”)

“health sector organization” means,

- (a) a hospital within the meaning of the *Public Hospitals Act*,
- (b) a licensee within the meaning of the *Long-Term Care Homes Act, 2007*,
- (c) a local health integration network, but only with respect to,
 - (i) professional services, personal support services and homemaking services as defined in the *Home Care and Community Services Act, 1994* provided by or arranged by a local health integration network under that Act,

(ii) the placement of a person into,

(A) a long-term care home within the meaning of the *Long-Term Care Homes Act, 2007*,

(B) a supportive housing program funded by the Ministry of Health and Long-Term Care or a local health integration network under the *Home Care and Community Services Act, 1994*,

(C) a chronic care or rehabilitation bed in a hospital within the meaning of the *Public Hospitals Act*, or

(D) an adult day program that is provided under the *Home Care and Community Services Act, 1994*, or

(iii) any other services that are prescribed,
and

(d) any other organization that is provided for in the regulations and that receives public funding; (“organisme du secteur de la santé”)

“health service provider” has the meaning set out in subsection (2); (“fournisseur de services de santé”)

“integrate” includes,

(a) to co-ordinate services and interactions between different persons and entities,

(b) to partner with another person or entity in providing services or in operating,

(c) to transfer, merge or amalgamate services, operations, persons or entities,

(d) to start or cease providing services,

(e) to cease to operate or to dissolve or wind up the operations of a person or entity,

and “integration” has a similar meaning; (“intégrer”, “intégration”)

“integrated care delivery system” means a person or entity, or a group of persons or entities, designated under subsection 9 (1); (“FRENCH”)

“local health integration network” means a local health integration network as defined in section 2 of the *Local Health Integration Act, 2006*, and if that Act has been repealed, means such a network as it was defined immediately before the repeal; (“réseau local d’intégration des services de santé”)

[does this work?]

“patient ombudsman” means the patient ombudsman appointed under Part xx.1; (“ombudsman des patients”)

[may decide to move this to be Part-specific]

“personal health information” has the same meaning as in the *Personal Health Information Protection Act, 2004*; (“renseignements personnels sur la santé”)

“personal information” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*; (“renseignements personnels”)

“Minister” means the Minister of Health and Long-Term Care or such other member of the Executive Council to whom the administration of this Act is assigned under the *Executive Council Act*; (“ministre”)

“Ministry” means the Ministry of the Minister; (“ministère”)

“operational plan” means the plan that the Super Agency develops under section 23; (“plan de services de santé intégrés”)

“personal health information” has the same meaning as in section 4

of the *Personal Health Information Protection Act, 2004*;
("renseignements personnels sur la santé")

"prescribed" means prescribed by the regulations; ("prescrit")

"provincial strategic plan" means the provincial strategic plan developed by the Minister under section 8.1 of the *Ministry of Health and Long-Term Care Act*; ("FRENCH")

"regulations" means the regulations made under this Act;
("règlements")

"service accountability agreement" means the service accountability agreement that the Super Agency is required to enter into with a health service provider or an integrated care delivery system under section 28; ("entente de responsabilisation en matière de services")

"Super Agency" means the corporation continued by section 4.
("FRENCH")

Health service provider

(2) In this Act,

"health service provider" means the following persons and entities:

1. A person or entity that operates a hospital within the meaning of the *Public Hospitals Act* or a private hospital within the meaning of the *Private Hospitals Act*.

2. A person or entity that operates a psychiatric facility within the meaning of the *Mental Health Act* except if the facility is,

i. a correctional institution operated or maintained by a member of the Executive Council, other than the Minister, or

ii. a prison or penitentiary operated or maintained by the Government of Canada.

3. The University of Ottawa Heart Institute/Institut de cardiologie de l'Université d'Ottawa.

4. A licensee within the meaning of the *Long-Term Care Homes Act, 2007*, other than a municipality or board of management described in paragraph 5.

5. A municipality or board of management that maintains a long-term care home under Part VIII of the *Long-Term Care Homes Act, 2007*.

6. A person or entity approved under the *Home Care and Community Services Act, 1994* to provide services.

NTD: It's possible this paragraph might have to change if extensive amendments are made to the HCCSA.

7. A not for profit entity that operates a community health centre.

8. A not for profit entity that provides community mental health and addiction services.

9. A not for profit entity that operates a family health team.

10. A not for profit entity that operates a nurse-practitioner-led clinic.

11. A not for profit entity that operates an Aboriginal health access centre.

12. A person or entity that provides primary care nursing services, maternal care or inter-professional primary care programs and services.

13. A not for profit entity that provides palliative care services, including a hospice.

14. A person or entity that provides physiotherapy services in a clinic setting that is not otherwise a health service provider.

15. An independent health facility within the meaning of the *Independent Health Facilities Act*.

16. Any other person or entity or class of persons or entities that is prescribed.

[MOHLTC LSB Note to draft: The current prohibition on physicians being HSPs as set out in s.2(3) of LHSIA has not been included]

Exclusion, community services

(3) A person or entity that provides, as a service provider within the meaning of the *Home Care and Community Services Act*, 1994, a community service that has been purchased by a health service provider or an integrated care delivery system, is not a health service provider within the meaning of this Act in respect of the provision of the purchased service.

Delegation

2. (1) The Minister may, in writing, delegate any of the Minister's powers or duties under this Act or any other Act for which the Minister is responsible, other than the power to make regulations, to the Super Agency.

Deeming

(2) Where the Minister has made a delegation under subsection (1), a reference in an Act or the regulations to the Minister is deemed, with respect to the power or duty that has been delegated, to be a reference to the Super Agency.

Integrated care delivery systems

3. Any obligation or decision that, under this Act, applies to an integrated care delivery system applies to, and is binding on, each constituent person or entity of the integrated care delivery system to the extent necessary to make the obligation or decision practicable.

PART II

SUPER AGENCY

CONTINUATION AND APPLICATION

Super Agency

4. The corporation that was incorporated under the *Corporations Act* under the name Health Program Initiatives in English and Initiatives pour les programmes de santé in French on the date _____ is continued as a corporation without share capital under the name Super Agency in English and _____ in French.

NTD: This corporation is yet to be incorporated. Name of established corporation to be confirmed once it is made.

Crown Agency

5. The Super Agency is an agent of the Crown and may exercise its powers only as an agent of the Crown.

Application of other Acts

Corporations Act and Corporations Information Act

6. (1) The *Corporations Act* and the *Corporations Information Act* do not apply to the Super Agency except as may be prescribed.

Charities Accounting Act

(2) The *Charities Accounting Act* does not apply to the Super Agency.

No charitable property

(3) The property of the Super Agency is not charitable property.

Non-application of single employer rule

(4) Subsection 1 (4) of the *Labour Relations Act, 1995* does not apply to the Super Agency.

OBJECTS AND GENERAL POWERS

Objects of the Super Agency.

7. The objects of the Super Agency are,

- (a) to implement the health system strategies developed by the Ministry;
- (b) to manage health service needs across Ontario consistent with the Ministry's health system strategies to ensure the sustainability of the Ontario health system through.
 - (i) health system operational management and coordination,
 - (ii) health system performance measurement and management, evaluation, monitoring and reporting,
 - (iii) health system quality improvement
 - (iv) clinical standards development for patient care and quality standards for patient safety,
 - (v) knowledge dissemination,
 - (vi) patient engagement and patient relations,
 - (vii) digital health, information technology and data management services, and
 - (viii) support of health care practitioner recruitment and retention;
- (c) to undertake and support activities related to tissue donation and transplantation;
- (d) to support the patient ombudsman in carrying out their functions;
- (e) to provide supply chain management services to health services providers and related organizations;

(f) to provide advice, recommendations and information to the Minister and other participants in the Ontario health care system in respect of issues related to health care that the Minister may specify;

(g) to promote health service integration to enable appropriate, coordinated and effective health service delivery; and

(h) any other prescribed objects.

General powers

8. (1) Except as limited by this Act, the Super Agency has the capacity, rights and powers of a natural person for carrying out its objects.

Use of revenue

(2) The Super Agency shall carry out its operations without the purpose of gain and shall not use its revenue, including all money or assets it receives by grant, contribution or otherwise, for any purpose other than to further its objects.

Cabinet approval

(3) The Super Agency shall not exercise the following powers without the approval of the Lieutenant Governor in Council:

1. Acquiring, disposing, leasing, mortgaging, charging, hypothecating or otherwise transferring or encumbering any interest in real property, except for leasing office space that is reasonably necessary for the purposes of the Super Agency.

2. Borrowing or lending money.

3. Pledging, charging or encumbering any of its personal property.

4. Creating a subsidiary.

5. Selling any of its services, including any analyses it has prepared of any information it has

collected.

6. Doing anything else that is prescribed as being a power that the Super Agency may not exercise without such approval.

Approval of two Ministers

(3) The Super Agency shall not exercise the following powers without the approval of both the Minister and the Minister of Finance:

1. Receiving money or assets from any person or entity except the Crown in right of Ontario, with the exception of money or assets that are received pursuant to a transfer order.

2. Acting in association with a person or entity that conducts any fundraising activities or programs, directly or indirectly, for the Super Agency.

Approval of Minister

(5) The Super Agency shall not exercise the following powers without the approval of the Minister:

1. Making charitable donations except as authorized by this Act.

2. Applying for or obtaining registration as a registered charity under the *Income Tax Act* (Canada).

3. Entering into an agreement with any person, entity or government for the provision of services outside Ontario.

4. Entering into an agreement with any government or government agency outside Ontario, including the Government of Canada or the government of a province or territory of Canada.

No political donations

(6) The Super Agency shall not make any political donations.

Integrated care delivery system

9. (1) The Super Agency may designate a person or entity, or a group of persons or entities, as an integrated care delivery system.

Restriction

(2) The Super Agency shall not make a designation under subsection (1) unless,

(a) any prescribed conditions or requirements have been met; and

(b) the person, entity or group of persons or entities has the ability to deliver, in an integrated and coordinated manner, at least two of the following types of health services to a patient:

(i) hospital services,

(ii) primary care services,

(iii) mental health or addictions services,

(iv) home care or community services,

(v) long-term care home services,

(vi) palliative care services,

(vii) any other prescribed health care service.

Publication

(3) The Super Agency shall publish a list of integrated care delivery systems that have been designated under subsection (1) on its website.

**BOARD OF DIRECTORS, CHIEF EXECUTIVE OFFICER AND
EMPLOYEES**

Board of Directors

10. (1) The Super Agency shall consist of not more than 15 members appointed by the Lieutenant Governor in Council who shall form the board of directors of the Super Agency.

Term

(2) Subject to subsection (3), the following provisions apply respecting the term of members of the board of directors of the Super Agency:

1. Each member shall hold office for a term of up to three years at the pleasure of the Lieutenant Governor in Council and may be reappointed for any number of terms of up to three years.
2. Despite paragraph 1, no person may be a member for more than six years in total.
3. Despite paragraph 2, a member who is designated as chair under subsection (7) after serving at least three years as a member may, despite anything else in subsection (7), be appointed for one further term of up to three years while designated as chair.

Termination

(3) A member ceases to be a member of the Super Agency if, before the term of the member expires,

- (a) the Lieutenant Governor in Council revokes the member's appointment; or
- (b) the member dies, resigns as a member of the board of directors or becomes a bankrupt.

Successor's term

(5) If a person ceases to be a member of the board of directors before the term of the member expires, the first term of the person's successor shall be for the remainder of the first person's term.

Expenses

(6) The members of the Super Agency shall receive the remuneration and reimbursement for reasonable expenses that the Lieutenant Governor in Council determines.

Chair

(7) Subject to subsection (10), the Lieutenant Governor in Council shall designate a chair from among the members of the board of directors.

Vice-chair

(8) The board of directors may, as provided for in by-law, designate one or more members to act as vice-chairs.

Chair's role

(9) The chair shall preside over the meetings of the board of directors.

Vice-chair

(10) If the chair is absent or otherwise unable to act or if the office is vacant, a vice-chair has all the powers and shall perform the duties of the chair.

Absence of chair and vice-chairs

(11) In the absence of the chair and, if applicable, the vice-chairs, a director that the board of directors designates shall act as the chair.

Where no designation

(12) If the Lieutenant Governor in Council has not designated a chair, the members of the board of directors may select a chair from among their members to hold office as provided for by by-law, until such time as the Lieutenant Governor in Council makes a designation.

Board meetings

11. (1) The board of directors of the Super Agency shall meet regularly throughout the year and in any event shall hold at least four meetings in each calendar year.

Quorum

(2) A majority of the board of directors constitutes a quorum for the conduct of the business of the board.

Chief Executive Officer

12. (1) The Super Agency shall appoint and employ a chief executive officer.

Role

(2) The chief executive officer is responsible for the management and administration of the affairs of the Super Agency, subject to the supervision and direction of its board of directors.

Restriction

(3) The chief executive officer shall not be a member of the board of directors of the Super Agency.

Transition

(4) A chief executive officer who held office in the Super Agency that was incorporated under the *Corporations Act* under the name Health Program Initiatives in English and Initiatives pour les programmes de santé in French immediately before the coming into force of this section continues to hold that office in the Super Agency until their position otherwise ends.

Remuneration

(5) The Minister may fix ranges for the salary or other remuneration and benefits of a chief executive officer and the Super Agency shall provide a salary or other remuneration and benefits to its chief executive officer within the ranges, if any, that the Minister fixes.

Other employees

13. (1) The chief executive officer may appoint and employ such employees as are considered necessary for the proper conduct of the affairs of the Super Agency.

Same

(2) Any employees who were employed by the corporation that was incorporated under the *Corporations Act* under the name Health Programs Initiatives in English and Initiatives pour les programmes de santé in French immediately before the coming into

force of this section continue to be employees of the Super Agency until their employment otherwise ends.

NTD: Name of corporation to be confirmed.

AFFAIRS OF THE SUPER AGENCY

Affairs of Super Agency

14. (1) The affairs of the Super Agency are under the management and control of its board of directors.

Delegation

(2) The board of directors may delegate any of its powers or duties under this Act or any other Act to such employees of the Agency as the board considers appropriate and may impose conditions and restrictions with respect to the delegation.

By-laws and resolutions

15. (1) Subject to subsections (4) and (5), the board of directors may make by-laws and pass resolutions regulating its proceedings and generally for the conduct and management of the affairs of the Super Agency, including establishing committees.

Officers

(2) Without limiting the generality of subsection (1), the board of directors may make by-laws or pass resolutions to appoint officers and assign to them such powers and duties as the board considers appropriate.

Committees

(3) The board of directors of the Super Agency shall,

(a) establish, by by-law, the committees of the board that the Minister, by regulation, specifies;

(b) appoint as members of those committees the persons who meet the qualifications, if any, that the Minister specifies in the regulation; and

(c) ensure that those committees operate in

accordance with the other requirements, if any, that the Minister specifies in the regulation.

Minister's approval

(4) The Minister may require the board of directors to submit a proposed by-law to the Minister for approval before making the by-law concerned and if so, the board shall not make the by-law concerned until the Minister approves it.

Same, after making

(5) The Minister may require the board of directors to submit a by-law to the Minister for approval and if so,

(a) the by-law concerned ceases to be effective from the time that the Minister imposes the requirement until the Minister approves the by-law;

(b) anything that the board has done in compliance with the by-law concerned before the Minister imposes the requirement is valid; and

(c) the board may do anything that, before the Minister imposes the requirement, it has agreed to do.

LIABILITY, INDEMNIFICATION AND JUDGMENTS

Duty of care and indemnification

17. (1) Subject to subsection (2), subsection 134 (1) and section 136 of the *Business Corporations Act* apply with necessary modifications to the Super Agency, its board of directors and its officers.

Approval of indemnity

(2) The Super Agency shall not give an indemnity under section 136 of the *Business Corporations Act* to any person unless the indemnity has been approved in accordance with section 28 of the *Financial Administration Act*.

Unpaid judgments against the Super Agency

18. The Minister of Finance shall pay from the Consolidated

Revenue Fund the amount of any judgment against the Super Agency that remains unpaid after the Super Agency has made all reasonable efforts, including liquidating its assets, to pay the amount of the judgment.

DIRECTIVES AND STANDARDS

Directives by Minister

19. (1) Where the Minister considers it to be in the public interest to do so, the Minister may issue operational or policy directives to any or all of the following:

1. The Super Agency.
2. A health service provider.
3. An integrated care delivery system.

Included power

(2) For greater certainty, and without in any way restricting the generality of subsection (1), the power to make operational and policy directives under that subsection includes the power to make directives requiring a health service provider or integrated care delivery system to use the procurement and supply chain services provided by the Agency or another specified organization.

Binding

(3) The Super Agency, health service provider or integrated care delivery system shall comply with every directive of the Minister.

General or particular

(4) An operational or policy directive of the Minister may be general or particular in its application.

Non-application of *Legislation Act, 2006*

(5) Part III (Regulations) of the *Legislation Act, 2006* does not apply to operational or policy directives.

Public availability

(5) The Minister shall publish every directive under this section on a website.

Law prevails

(6) For greater certainty, in the event of a conflict between a directive issued under this section and a provision of any applicable Act or rule of any applicable law, the Act or rule prevails.

Provincial standards

20. (1) The Minister may issue provincial standards for the provision of health services that are provided or arranged by health service providers or integrated care delivery systems where the Minister considers it to be in the public interest to do so.

General or particular

(2) A standard of the Minister may be general or particular in its application.

Obligations re standards

(3) Every health service provider and integrated care delivery system to which a standard under this section is directed shall comply with the standard.

Non-application of *Legislation Act, 2006*

(4) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a standard under this section.

Resolving differences over priorities

(5) If a standard of a health service provider or an integrated care delivery system conflicts with a provincial standard, the provincial standard prevails.

Same

(6) In the event of a conflict between a standard issued under this section and a provision of any applicable Act or rule of any applicable law, the Act or rule prevails.

Public availability

(7) The Minister shall publish every standard under this section on a website.

Fiscal year

21.1 The fiscal year of the Super Agency commences on April 1 in each year and ends on March 31 of the following year.

Audits and appointment of Auditor

Audit

22. (1) The board of directors of the Super Agency shall appoint an auditor licensed under the *Public Accounting Act, 2004* to audit the accounts and financial transactions of the Super Agency annually.

Other audits

(2) In addition to the requirement for an annual audit,

(a) the Minister may, at any time, review or audit any aspect of the operations of the Super Agency; and

(b) the Auditor General may, at any time, audit any aspect of the operations of the Super Agency.

Consultations

24. (1) The Super Agency, integrated care delivery systems and health service providers shall establish mechanisms for consulting with patients, families, caregivers, health sector employees and others as part of their operational planning processes in accordance with the regulations, if any.

Duties

(2) As part of the consultation mechanisms under subsection (1), the Super Agency shall engage, with respect to the matters provided for in the regulations,

(a) the prescribed Indigenous health planning entities; and

(b) the prescribed French language health planning entities.

PART V FUNDING AND ACCOUNTABILITY

Funding of Super Agency

25. (1) The Minister may provide funding to the Super Agency on the terms and conditions that the Minister considers appropriate.

Savings

(2) When determining the funding to be provided to the Super Agency under subsection (1) for a fiscal year, the Minister shall consider whether to adjust the funding to take into account a portion of any savings from efficiencies that the Super Agency generated in the previous fiscal year and that the Super Agency proposes to spend on patient care in subsequent fiscal years[in accordance with the accountability agreement.

Accountability of Super Agency

26. (1) The Minister and the Super Agency shall enter into an accountability agreement in respect of the health system.

Accountability agreement

(2) The accountability agreement shall be for more than one fiscal year and shall include,

(a) performance goals and objectives for the Super Agency and the health system;

(b) performance standards, targets and measures for the Super Agency and the health system;

(c) requirements for the Super Agency to report on the performance of the Super Agency and the health system;

(d) a plan for spending the funding that the Super Agency receives under section 25, which spending shall be in accordance with the appropriation from which the Minister has provided the funding to the Super Agency;

- (e) a progressive performance management process for the Super Agency; and
- (f) all other prescribed matters, if any.

If no agreement

(3) If the Minister and the Super Agency are unable to conclude an accountability agreement through negotiations, the Minister may set the terms of the agreement which shall include the matters set out in clauses (2) (a) to (f).

Reports to Minister

(4) The Super Agency shall provide to the Minister, within the time and in the form that the Minister specifies, the plans, reports, financial statements, including audited financial statements, and information, other than personal health information, that the Minister requires for the purposes of administering this Act.

Publication

(5) The Super Agency shall publish a current copy of the accountability agreement on its website.

Funding

27. (1) The Super Agency may provide funding to a health service provider or integrated care delivery system in respect of services that the service provider or delivery system provides.

Non-health services

(2) The Super Agency may provide funding to a health service provider, integrated care delivery system or other person or entity in respect of non-health services.

Terms and conditions

(3) The funding that the Super Agency provides under this section shall be on the terms and conditions that the Super Agency considers appropriate and in accordance with the funding that the Super Agency receives under section 25, the Super Agency's accountability agreement and the prescribed requirements, if any.

Assignment of agreements

(4) The Minister may assign to the Super Agency, integrated

care delivery system, or another person or entity the Minister's rights and obligations under all or part of an agreement between the Minister and a health service provider, an integrated care delivery system or a person or entity that supports the provision of health care, including an agreement to which a person or entity that is not a health service provider, an integrated care delivery system or a person or person or entity that supports the provision of health services is also a party.

Termination date

(5) In an assignment under subsection (4), the Minister may provide that the agreement, or the part of it assigned, terminates on the earliest of,

(a) the date set out in the agreement;

(b) the date that the Super Agency and the health service provider, integrated care delivery system or person or entity that supports the provision of health care enter into a service accountability agreement; and

(c) the date, as the Minister specifies, that the Super Agency and the health service provider, integrated care delivery system or person or entity that supports the provision of health care have to enter into a service accountability agreement.

[please review, I am losing track of who all has to do what here]

Service accountability agreement

28. Where the Super Agency proposes to provide funding to a health service provider, integrated care delivery system or other person or entity or amend a service accountability agreement with a health service provider, integrated care delivery system or other person or entity, the Super Agency and the provider, system, person or entity shall enter into a service accountability agreement or amend such an agreement in accordance with the requirements provided for in the regulations, if any.

No restriction on patient mobility

29. (1) None of the following shall enter into any agreement

or other arrangement that restricts or prevents an individual from receiving services based on the geographic area in which the individual resides:

1. The Super Agency.
2. A health service provider.
3. An integrated care delivery system.
4. Any other person or entity that receives funding under section 27.

Geographic restrictions for homecare services

(2) For greater certainty, subsection (1) applies to a service accountability agreement in respect of funding provided by the Super Agency for the delivery of services by a health service provider or an integrated care delivery system under section 28, but it does not apply to any agreement entered into under the *Home Care and Community Services Act, 1994* that requires a health service provider or integrated care delivery system to deliver services in a specified geographic area.

Audits, reviews, etc.

30. The Super Agency may at any time direct that any health service provider, integrated care delivery system or other person or entity that receives funding from the Super Agency under section 27,

(a) engage or permit one or more auditors licensed under the *Public Accounting Act, 2004* to audit the accounts and financial transactions of the health service provider, integrated care delivery system or person or entity; or

(b) engage in or permit an operational review or peer review of the activities of the health service provider, integrated care delivery system or person or entity.

Information and reports

31. (1) The Super Agency may require that any health service provider, integrated care delivery system or other person or

entity to which the Super Agency provides funding or proposes to provide funding under section 27 provide to the Super Agency the plans, reports, financial statements and other information, other than personal health information, that the Super Agency requires for the purposes of exercising its powers and duties under this Act or for the purposes that are prescribed.

Form of reports

(2) A health service provider, integrated care delivery system or other person or entity that is required to provide plans, reports, financial statements or information under subsection (1) shall provide them within the time and in the form that the Super Agency specifies.

Disclosure of information

(4) The Super Agency may disclose information that it collects under this section to the Minister, if the Minister requires the information for the purposes of exercising powers and duties under this Act.

Investigators

31.1 (1) The Super Agency may, where it considers it in the public interest to do so, appoint one or more investigators to investigate and report on,

(a) the quality of the management of a health service provider, integrated care delivery system or other person or entity that receives funding under section 27;

(b) the quality of the care and treatment of persons by a health service provider or an integrated care delivery system that receives funding under section 27; or

(c) any other matter relating to a health service provider, integrated care delivery system or other person or entity that receives funding under section 27,

Exclusion

(2) Subsection (1) does not apply to a licensee within the meaning of the *Long-Term Care Homes Act, 2007*, and where a licensee within the meaning of that Act is among the persons or

entities comprising an integrated care delivery system, this section only applies to the services and operations of the delivery system that are not governed under that Act.

Notice of appointment

(3) Before appointing an investigator, the Super Agency shall give notice of its intention to appoint an investigator to the Minister and the health service provider, integrated care delivery system or person or entity.

Powers

(4) An investigator may, without a warrant and at reasonable times,

(a) enter the premises of a health service provider, integrated care delivery system or person or entity that may be investigated under this section;

(b) subject to subsection (5), enter any premises where a health service provider, integrated care delivery system or person or entity that may be investigated under this section provides services; and

(c) inspect the premises, the services provided on the premises and the records that the investigator determines are relevant to the investigation.

Dwellings

(5) No investigator shall enter a place that is being used as a dwelling, except with the consent of the occupier.

Identification

(6) An investigator conducting an investigation shall produce, on request, evidence of their appointment.

Powers of investigator conducting investigation

(7) An investigator conducting an investigation may,

(a) require the production of records or anything else that the investigator determines is relevant to the investigation, including books of account, documents,

bank accounts, vouchers, correspondence and payroll records, records of staff hours worked and records of personal health information;

(b) examine and copy any record or thing required under clause (a);

(c) upon giving a receipt and showing the evidence of appointment, remove a record or anything else that is relevant to the investigation for review or copying, as long as the review or copying is carried out with reasonable dispatch and the record or thing is promptly returned;

(d) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business in the place; and

(e) question a person on matters the investigator determines are relevant to the investigation.

Obligation to produce and assist

(8) If an investigator requires the production of a record or anything else that the investigator determines is relevant to the investigation under this section, any of the following who has custody of the record or thing shall produce it and, in the case of a record, shall on request provide any assistance that is reasonably necessary to interpret the record or to produce it in a readable form:

1. The health service provider, integrated care delivery system or other person or entity that may be investigated under this section.

2. Any person employed by the provider, system, person or entity.

3. Any person performing services for the provider, system, person or entity.

Obligation to comply with questioning

(9) A person who is questioned by an investigator under clause (7)

(e) shall co-operate fully with the investigator.

Same

(10) If an investigator accesses personal health information under subsection (9), the investigator,

(a) shall not collect, use or disclose the personal health information if other information will serve the purpose of the inspection;

(b) shall not collect, use or disclose more personal health information than is reasonably necessary for the purpose of the inspection; and

(c) shall comply with any conditions or requirements that may be prescribed.

Confidentiality

(11) An investigator and the investigator's agents shall keep confidential all information that comes to the investigator's knowledge in the course of an investigation under this Act and shall not communicate any information to any other person except as required by law or except where the communication is to the Super Agency or a person employed in or performing services for the Super Agency.

Report of investigator

(12) The investigator shall, upon completion of an investigation, make a report in writing to the Super Agency.

De-identification of personal health information

(13) Before providing a report to the Super Agency under subsection (12), the investigator shall ensure that all personal health information is de-identified.

Same

(14) The Super Agency shall cause a copy of the report of an investigation, with all personal health information de-identified, to be delivered to the health service provider, integrated care delivery system or other person that is the subject of the investigation.

Public availability

(15) The Super Agency shall make every report of an investigation available to the public.

Supervisor

31.2 (1) On the recommendation of the Minister, the Lieutenant Governor in Council may appoint a person as a supervisor of a health service provider or an integrated care delivery system where the Lieutenant Governor in Council considers it in the public interest to do so.

Notice of appointment

(2) The Minister shall give the health service provider or integrated care delivery system at least 14 days notice before recommending to the Lieutenant Governor in Council that a supervisor be appointed.

Immediate appointment

(3) Subsection (2) does not apply in respect of a health service provider or integrated delivery system that is governed by a board if there are not enough members on the board to form a quorum.

Term of office

(4) The appointment of a supervisor is valid until terminated by order of the Lieutenant Governor in Council.

Powers of supervisor

(5) Unless the appointment provides otherwise, a supervisor has the exclusive right to exercise all of the powers of a health service provider or integrated care delivery system and, where the health service provider or integrated care delivery system is owned or operated by a corporation, of the corporation, its board, its officers, members and shareholders.

Same

(6) The Lieutenant Governor in Council may specify the powers and duties of a supervisor appointed under this section and the terms and conditions governing those powers and duties.

Additional powers of supervisor

(7) If, under the order of the Lieutenant Governor in Council, the board of a health service provider or integrated care delivery system continues to have the right to act with regard to any matters, any such act of the board is valid only if approved in writing by the supervisor.

Right of access

(8) A supervisor appointed for a health service provider or an integrated care delivery system has the same rights as the board and the administrator of the provider or system in respect of the documents, records and information of the provider or system.

Report to Minister

(9) A supervisor shall report to the Minister as required by the Minister.

Disclosure

(10) The Minister shall make any report provided to the Minister under subsection (9) public.

Personal health information to be removed

(11) Before making the report public, the Minister shall ensure that all personal health information in the report is redacted.

Minister's directions

(12) The Minister may issue directions to a supervisor with regard to any matter within the jurisdiction of the supervisor.

Directions to be followed

(13) A supervisor shall carry out every direction of the Minister.

**PART VI
INTEGRATION**

Definition

32. In this Part,

“facilitation decision” means a decision of the Super Agency under

section 35;

“integration decision” means,

(a) a facilitation decision;

(b) an integration order by the Minister under section 36; or

(c) a decision by the Minister under subsection 38 (8) that orders a health service provider not to proceed with the integration described in the decision.

“service” includes,

(a) a service or program that is provided directly to people,

(b) a service or program, other than a service or program described in clause (a), that supports a service or program described in that clause, or

(c) a function that supports the operations of a person or entity that provides a service or program described in clause (a) or (b).

Identifying integration opportunities

33. The Super Agency and each health service provider and integrated care delivery system shall separately and in conjunction with each other identify opportunities to integrate the services of the health system to provide appropriate, co-ordinated, effective and efficient services.

Integration by Super Agency

34. (1) The Super Agency may integrate the health system by,

(a) providing or changing funding to a health service provider or integrated care delivery system under section 27;

(b) facilitating and negotiating,

(i) the integration of persons or entities where at least one of the persons or entities is a health service provider or integrated care delivery system, or

(ii) the integration of services between health service providers or integrated care delivery systems or between a provider or a system and a person or entity that is not a provider or a system;

Facilitation decision

35. The Super Agency shall issue a facilitation decision when the Super Agency facilitates or negotiates,

(a) the integration of persons or entities where at least one of the persons or entities is a health service provider or an integrated care delivery system, or

(b) the integration of services between health service providers or integrated care delivery systems or between a health service provider or integrated care delivery system and a person or entity that is neither a health service provider nor an integrated care delivery system and the parties reach an agreement with respect to that integration.

Required integration

36. (1) The Minister may, if the Minister considers it in the public interest to do so and subject to the other provisions of this section, order one or more health service providers or integrated care delivery systems that receives funding from the Super Agency and that carry on operations on a for profit or not for profit basis to do anything to integrate the health system on or after the date set out in the order, including any or all of the following:

1. To provide all or part of a service or to cease to provide all or part of a service.
2. To provide a service to a certain level, quantity

or extent.

3. To transfer all or part of a service from one location to another.
4. To transfer all or part of a service to or to receive all or part of a service from another person or entity.
5. To carry out another type of integration of services that is prescribed.
6. To cease operating, to dissolve or to wind up its operations.
7. To amalgamate with one or more health service providers or integrated care delivery systems that receive funding from the Super Agency under subsection 27 (1).
8. To transfer all or substantially all of its operations to one or more persons or entities.
9. To do anything or refrain from doing anything necessary for them to achieve anything under any of paragraphs 1 to 8, including to transfer property to or to receive property from another person or entity in respect of the services or operations affected by the decision.

Restrictions

- (2) Despite subsection (1), the Minister shall not,
 - (a) issue an order under that subsection that unjustifiably, as determined under section 1 of the *Canadian Charter of Rights and Freedoms*, requires a religious organization to provide a service that is contrary to the religion related to the organization;
 - (b) issue an order under that subsection that requires the transfer of property held for a charitable purpose to a person or entity that is not a charity;
 - (c) issue an order under that subsection that

requires a person or entity that is not a charity to receive property from a person or entity that is a charity and to hold the property for a charitable purpose;

(d) issue an order under that subsection to a board of management described in paragraph 5 of the definition of “health service provider” in subsection 1 (2) or a municipality;

(e) issue an order under that subsection to a health service provider described in paragraph 4 of the definition of “health service provider” in subsection 1 (2), if the service provider is not also described in another paragraph of that definition;

[for now I have removed the reference to icds here, since it seems to me that it would be caught in its capacity as an hsp in the situation you described. If you have doubts, let me know and I will try to draft it through]

(f) issue an order under paragraph 1 of that subsection, in respect of the operation of a long-term care home, to a health service provider described in paragraph 4 of the definition of “health service provider” in subsection 1 (2), if the service provider or is also described in another paragraph of that definition;

(g) issue an order under paragraph 2 of that subsection to a health service provider or integrated care delivery system that carries on operations on a not for profit basis to amalgamate with one or more health service providers or integrated care delivery systems that carries on operations on a for profit basis;

(h) issue an order under paragraph 3 of that subsection to a health service provider or integrated care delivery systems that carries on operations on a not for profit basis to transfer all or substantially all of its operations to one or more persons or entities that carries on operations on a for profit basis; or

(i) issue an order under that subsection that require a health service provider or integrated care delivery system to do anything else that is prescribed.

Notice of proposed order

(3) At least 30 days before issuing an order under subsection (1), the Minister shall,

(a) notify a health service provider or integrated care delivery system that the Minister intends to issue the order;

(b) provide a copy of the proposed order to the service provider or delivery system; and

(c) publish the proposed order on a website.

Submissions

(4) Any person may make written submissions about the proposed order to the Minister no later than 30 days after the Minister publishes the proposed order on a website.

Issuing a decision

(5) If at least 30 days have passed since the Minister gave the notice required under subsection (3) and after the Minister has considered any written submissions made under subsection (4), the Minister may issue an integration order under subsection (1), and subsections (3) and (4) do not apply to the issuance of the order.

Variance

(6) An integration order mentioned in subsection (5) may be different from the proposed decision that was the subject of the notice mentioned in subsection (3).

Compliance

36.1 (1) A person or entity that is a party to an integration order shall comply with it.

Corporate powers

(2) Despite any Act, regulation or other instrument related to the corporate governance of a corporation that is subject to an

integration order, including the *Business Corporations Act*, the *Corporations Act*, any articles of incorporation, any letters patent, any supplementary letters patent or any by-laws, the corporation shall be deemed to have the necessary powers to comply with the order, as the case may be, and for greater certainty, a corporation shall comply with an integration order despite any requirement for any meeting or approval of any member, shareholder or director of a corporation under any Act, regulation, or other instrument related to the corporate governance of the corporation.

Court order

(3) The Minister may apply to the Superior Court of Justice for an order directing a person or entity that is a party to an integration order to comply with it.

Transfer of property held for charitable purpose

36.2 (1) If an integration order made under section 36 directs a health service provider or integrated care delivery system to transfer to a transferee property that it holds for a charitable purpose, all gifts, trusts, bequests, devises and grants of property that form part of the property being transferred shall be deemed to be gifts, trusts, bequests, devises and grants of property to the transferee.

Specified purpose

(2) If a will, deed or other document by which a gift, trust, bequest, devise or grant mentioned in subsection (1) is made indicates that the property being transferred is to be used for a specified purpose, the transferee shall use it for the specified purpose.

Application

(3) Subsections (1) and (2) apply whether the will, deed or document by which the gift, trust, bequest, devise or grant is made, is made before or after this section comes into force.

No compensation

36.3 (1) Despite any other Act and subject to subsection (3), no health service provider, integrated care delivery system or other person or entity is entitled to any compensation for any loss or damages, including loss of revenue or loss of profit, arising from any

direct or indirect action that the Minister or the Agency takes under this Act, including an integration order made under section 36.

Same, transfer of property

(2) Despite any other Act and subject to subsection (3), no person or entity, including a health service provider or integrated care delivery system , is entitled to compensation for any loss or damages, including loss of use, loss of revenue and loss of profit, arising from the transfer of property under an integration order made under section 36.

Exception

(3) If an integration order made under section 36 directs a health service provider or integrated care delivery system to transfer property to or to receive property from a person or entity, a person or entity, including a health service provider or integrated care delivery system, who suffers a loss resulting from the transfer is entitled to compensation as prescribed in respect of the portion of the loss that relates to the portion of the value of the property that was not acquired with money received from the Government of Ontario, the Super Agency, or any other agency of the Government, whether or not it is a Crown agent.

No expropriation

(4) Nothing in this Act and nothing done or not done in accordance with this Act constitutes an expropriation or injurious affection for the purposes of the *Expropriations Act* or otherwise at law.

Rules re integration decisions

Prohibition

37. (1) No integration decision shall permit a transfer of services that results in a requirement for an individual to pay for those services, except as otherwise permitted by law.

Form of decision

(2) An integration decision shall set out,

(a) the purpose and nature of the integration or proposed integration ;

- (b) the parties to the decision;
- (c) the actions that the parties to the decision are required to take or not to take, including any time period for doing so;
- (d) a requirement that the parties to the decision develop a human resources adjustment plan in respect of the integration;
- (e) the effective date of all transfers of services involved in the integration, if any; and
- (f) any other matter that the Super Agency or the Minister, as the case may be, considers relevant.

Notice of decision

(3) On issuing an integration decision, the Super Agency or the Minister, as the case may be, shall give the decision to the parties to the decision and publish it on a website.

Non-application of other Act

(4) The *Statutory Powers Procedure Act* does not apply to an integration decision.

Not a regulation

(5) An integration decision is not a regulation as defined in Part III (Regulations) of the *Legislation Act, 2006*.

[for now, dropped the amendment and revocation provisions, as they had become very complicated to work into the provisions as they developed. They should be fairly simple to work back in once the policy is clarified.]

Integration by providers and systems

38. (1) A health service provider or integrated care delivery system may integrate its services with those of another person or entity.

Application of other Act

(2) Nothing in this Act shall be interpreted as preventing the

application of the *Public Sector Labour Relations Transition Act, 1997*, in accordance with the terms of that Act, to an integration mentioned in subsection (1).

Notice

(3) If the integration mentioned in subsection (1) relates to services that are funded, in whole or in part, by the Super Agency, the health service provider or integrated care delivery system,

- (a) shall give notice of the integration to the Minister, unless the regulations provide otherwise;
- (b) may proceed with the integration if the service provider or delivery system is not required to give the notice mentioned in clause (a);
- (c) shall not proceed with the integration until 90 days have passed since giving the notice mentioned in clause (a), if the service provider or delivery system is required to give the notice and the Minister does not give notice under subsection (6);
- (d) shall not proceed with the integration until 90 days have passed since the Minister gives notice under subsection (6), if,
 - (i) the service provider or delivery system is required to give notice under clause (a),
 - (ii) the Minister gives notice under subsection (6), and
 - (iii) the Minister does not issue a decision under subsection (8);

(e) despite clauses (c) and (d), may proceed with the integration at any time if the Minister notifies the provider or delivery system that the Minister does not intend to give notice of a proposed decision under subsection (6) or issue a decision under subsection (8); and

(f) shall not proceed with the integration that is the subject of a decision under subsection (8), if the Minister issues such a decision.

Exceptions

(4) Subsection (3) does not apply to an integration that requires a decision of the Minister or a director under the *Independent Health Facilities Act* or the *Long-Term Care Homes Act, 2007*.

Required contents

(5) A notice under clause (3) (a) must include,

(a) a description of the proposed integration, including the identity of the parties involved with the integration;

(b) the health service provider's or integrated care delivery system's analysis of any financial implications, service delivery implications, health system implication or human resource implications of the proposed integration, where applicable;

(c) where applicable, a description of any community engagement processes that the provider or system used to consider the proposed integration, and a description of any issues that were raised in those consultation processes and the provider's or system's analysis, if any, of those issues;

(d) a description of the proposed timing or staging of the implementation of the proposed integration; and

(e) a description of the level of approval received by the provider or system within its organization.

Notice of proposed decision

(6) No later than 90 days after the health service provider or integrated care delivery system gives the notice required under subsection (3), the Minister may,

- (a) request more information about the proposed integration from the provider or system and where such a request has been made,
 - (i) the provider or system shall provide the information within 30 days of the request by the Minister, and
 - (ii) the time limit for the Minister to take the steps set out in clauses (a), (b) and (c) shall be extended, once only, by an additional 60 days;
- (b) notify a health service provider or integrated care delivery system that the Minister proposes to issue a decision under subsection (8);
- (c) provide a copy of the proposed decision to the service provider or integrated care delivery system; and
- (d) publish the proposed decision on a website.

Submissions

(7) Any person may make written submissions about the proposed decision to the Minister no later than 30 days after the Minister publishes the proposed decision on a website.

Issuing a decision

(8) If more than 30 days, but no more than 90 days, have passed after the Minister gives notice under subsection (6) and after the Minister has considered any written submissions made under subsection (7), the Minister may, if the Minister considers it in the public interest to do so, issue a decision ordering the health service provider not to proceed with the integration mentioned in the notice under clause (3) (a) or a part of the integration.

Matters to consider

(9) In issuing a decision under subsection (8), the Minister shall consider the extent to which the integration is not consistent with the Minister's operational plan and any other matter that the Minister considers relevant.

Variance

(10) An integration decision mentioned in subsection (8) may be different from the proposed decision that was the subject of the notice given under subsection (3).

[what does this mean in the context of an order not to proceed?]

Transfers, application of other Act

38.3 (1) The *Public Sector Labour Relations Transition Act, 1997* applies when an integration occurs that is,

(a) the transfer of all or part of a service of a person or entity under a facilitation decision of the Super Agency under section 35 or a required integration order of the Minister under section 36;

(b) the transfer of all or substantially all of the operations of a health service provider or integrated care delivery system under a facilitation decision of the Super Agency under section 35 or a required integration order of the Minister under section 36;

(c) the amalgamation of two or more persons or entities under a facilitation decision of the Super Agency under section 35 or under a required integration order made by the Minister under section 36.

Same

(2) For the purposes of the application of the *Public Sector Labour Relations Transition Act, 1997*,

(a) the changeover date is the effective date of the integration described in subsection (1) as set out in the facilitation decision or the required integration order, as the case may be;

(b) the predecessor employer or employers are,

(i) each person or entity from which the service or operations is or are transferred, in the case of an integration described in clause (1) (a) or

- (b), or
- (ii) each of the persons or entities that is amalgamated, in the case of an integration described in clause (1) (c); and
- (c) the successor employer or employers are,
- (i) each person or entity to which the service or operations is or are transferred, in the case of an integration described in clause (1) (a) or (b), or
- (ii) the person or entity that exists when the amalgamation takes effect, in the case of an integration described in clause (1) (c).

Exception

(3) Despite subsection (1) but subject to subsection (5), the *Public Sector Labour Relations Transition Act, 1997* does not apply when an integration described in subsection (1) occurs if the following describes the person or entity who would be the successor employer if that Act applied:

1. That person or entity is not a health service provider or an integrated care delivery system.
2. The primary function of that person or entity is not the provision of services within or to the health services sector.

Same, consent of all parties

(4) Despite subsection (1) but subject to subsection (5), the *Public Sector Labour Relations Transition Act, 1997* does not apply when an integration described in subsection (1) occurs if all of the following agree in writing that that Act does not apply to the integration:

1. The person or entity who would be the successor employer if that Act applied.

2. Every bargaining agent that has bargaining rights in respect of a bargaining unit at the person or entity who would be the successor employer if that Act applied.

3. Every bargaining agent that would have bargaining rights in respect of a bargaining unit at the person or entity who would be the successor employer if that Act applied.

Certain provisions still apply

(5) Where the *Public Sector Labour Relations Transition Act, 1997* does not apply to an integration described in subsection (1) by virtue of subsection (3) or an agreement entered into under subsection (4), sections 12 and 36 of that Act are not affected and, if applicable, apply to the integration in question.

Definition

(6) In subsections (7) to (21),

“Board” means the Ontario Labour Relations Board.

Application to Board

(7) Any person, entity or bargaining agent described in paragraph 1, 2 or 3 of subsection (4) may request the Board to make an order declaring that the *Public Sector Labour Relations Transition Act, 1997*, other than sections 12 and 36 of that Act, does not, despite subsection (1), apply to the integration in question.

Board order

(8) If requested to do so under subsection (7), the Board may by order declare that the *Public Sector Labour Relations Transition Act, 1997*, other than sections 12 and 36 of that Act, does not, despite subsection (1), apply to the integration in question.

Factors to consider

(9) When deciding whether to make an order under subsection (8), the Board shall consider the factors set out in subsection 9(3) of the *Public Sector Labour Relations Transition Act, 1997* and the other matters that it considers relevant.

Certain provisions still apply

(10) If the Board makes an order under subsection (8), the order shall specify that it does not affect sections 12 and 36 of the *Public Sector Labour Relations Transition Act, 1997* and that, if applicable, those provisions apply to the integration.

Proceedings before the Board

(11) Subject to subsections (12) to (19), sections 110 to 118 of the *Labour Relations Act, 1995* apply, with necessary modifications, with respect to anything the Board does under this section.

No panels

(12) If the Board is given authority to make a decision, determination or order under this section, it shall be made,

(a) by the chair or, if the chair is absent or unable to act, by the alternate chair; or

(b) by a vice-chair selected by the chair in the chair's sole discretion or, if the chair is absent or unable to act, selected by the alternate chair in the alternate chair's sole discretion.

Labour relations officers

(13) The Board may authorize a labour relations officer to inquire into any matter that comes before it under this section and to endeavour to settle the matter.

Rules to expedite proceedings

(14) The Board has, in relation to any proceedings under this section, the same powers to make rules to expedite proceedings as the Board has under subsection 110 (18) of the *Labour Relations Act, 1995*.

Non-application of other Act

(15) Rules made under subsection (14) apply despite anything in the *Statutory Powers Procedure Act*.

Not regulations

(16) Rules made under subsection (14) are not regulations within the meaning of Part III (Regulations) of the *Legislation Act*,

2006.

Interim orders

(17) The Board may make interim orders with respect to a matter that is or will be the subject of a pending or intended proceeding.

Timing

(18) The Board shall make decisions, determinations and orders under this Act in an expeditious fashion.

No appeal

(19) A decision, determination or order made by the Board is final and binding for all purposes.

Application of other provisions

(20) Subsections 96 (6) and (7) and sections 122 and 123 of the *Labour Relations Act, 1995* apply, with necessary modifications, with respect to proceedings before the Board and its decisions, determinations and orders under this section.

Non-application of *Arbitration Act, 1991*

(21) The *Arbitration Act, 1991* does not apply with respect to a proceeding before the Board under this section.

Devolution

38.4 (1) Despite any other Act, and except as provided in subsection (2), the Lieutenant Governor in Council may, by regulation, devolve to the Super Agency any of the powers, duties or functions, under any other Act for whose administration the Minister is responsible at the time of making the regulation, of the Minister or a person appointed by the Minister or the Lieutenant Governor in Council.

Exceptions

(2) A regulation made under subsection (1) shall not devolve to the Super Agency a power to make regulations under any other Act for whose administration the Minister is responsible

Conditions on devolution

(3) A regulation under subsection (1) may devolve all or part

of a power, duty or function to the Super Agency and may set out conditions on the exercise by the Super Agency of the power, duty or function and the modifications with which the power, duty or function is to apply.

Effect of devolution

(4) If a regulation under subsection (1) devolves a power, duty or function under an Act to the Super Agency,

- (a) the person or entity on which the Act confers the power, duty or function,
 - (i) shall no longer perform the power, duty or function to the extent that the regulation devolves it to the Super Agency, and
 - (ii) is released from any liability with respect to the power, duty or function to the extent that the regulation devolves it to the Super Agency if the liability arises on or after the day on which the regulation comes into force;
- (b) the Super Agency,
 - (i) has the authority to exercise the power, duty or function to the extent that the regulation devolves it if it does so in accordance with the Act, and
 - (ii) has the rights and immunities of the person or entity on which the Act confers the power, duty or function to the extent that the regulation devolves it to Super Agency, as if the Super Agency were that person or entity under that Act; and
- (c) the powers, duties or functions of any other person in respect of the devolved power, duty or function shall be read as if the Act provided that the Super Agency had the power, duty or function.

PART VIII TRANSFERS

Definitions

39. In this Part,

“transfer” means a transfer pursuant to an order under subsection 40 (1); **(French)**

“transferor” means an organization or local health integration network from which assets, liabilities, rights, obligations or employees are being transferred pursuant to an order under subsection 40 (1); **(French)**

“transfer recipient” means the Super Agency, integrated care delivery system, person or entity to which assets, liabilities, rights, obligations or employees are being transferred pursuant to an order under subsection 40 (1). **(French)**

Transfer order

40. (1) Despite anything in any other Act, but subject to the processes and requirements set out in this Part and any regulations made under this Part, the Minister may make an order,

(a) transferring all or part of the assets, liabilities, rights and obligations including, for greater certainty, any rights or obligations under a funding agreement or accountability agreement,

(i) of an organization listed in subsection (2) to the Super Agency, or

(ii) of a local health integration network to an integrated care delivery system or other person or entity; and

(b) transferring all or some of the employees,

- (i) of an organization listed in subsection (2) to the Super Agency, or
- (ii) of a local health integration network to an integrated care delivery system or other person or entity.

Organizations

(2) The following are the organizations for the purposes of subsection (1):

1. Cancer Care Ontario.
2. eHealth Ontario.
3. HealthForceOntario Marketing and Recruitment Agency.
4. Ontario Health Quality Council.
5. Trillium Gift of Life Network.
6. Any local health integration network.
7. Any other prescribed organization.

Notification requirement

(3) Before the Minister makes an order under subsection (1), the Minister shall notify the Super Agency and each affected organization, network, delivery system, person or entity.

Contents of order

(4) An order made under subsection (1),

(a) shall provide for the assets, liabilities, rights, obligations or employees that are to be transferred;

(b) shall specify a date on which the transfer of assets, liabilities, rights, obligations or employees, as the case may be, takes effect; and

(c) may specify that issues arising out of the interpretation of the order be resolved by the method specified in the order.

Non-application of *Legislation Act, 2006*

(5) Part III (Regulations) of the *Legislation Act, 2006* does not apply to an order made under subsection (1).

Notice of order

(6) The Minister shall provide the Super Agency and each affected organization, network, delivery system, person or entity with a copy of the order, and shall publish the order on a website.

[re-drafted notice provisions to apply to both transferors and transfer recipients, since probably everybody is interested]

Same

(7) The Super Agency and each organization, network, delivery system, person or entity that receives a copy of an order provided under subsection (5) shall,

(a) provide notice of the order and make copies available to affected employees and their bargaining agents and to other persons or entities whose contracts are affected by the order; and

(b) publish the order on a website.

Assumption of rights, obligations, etc.

41. (1) If the Minister makes an order under section 40,

(a) the transfer recipient assumes the operations, activities and affairs of the transferor, as of the date of the transfer; and

(b) the assets, liabilities, rights and obligations of the transferor that are provided for in the order, including contractual rights, interests, approvals, registrations and entitlements that exist immediately before the transfer date continue as the assets, liabilities, rights and obligations of the transfer recipient and are transferred to the transfer recipient without compensation.

Convictions, rulings etc.

(2) A conviction against, or ruling, order or judgment in favour of or against a transferor may be enforced by or against the transfer recipient.

Civil actions, etc.

(3) The transfer recipient shall be deemed to be the party plaintiff or the party defendant, as the case may be, in any civil action commenced by or against a transferor before the date of the transfer.

Note: Same concern as above.

No change of control

(4) A transfer shall not constitute a change of control of the transferor.

No breach, etc.

(5) A transfer is deemed not to,

(a) constitute a breach, termination, repudiation or frustration of any contract, including a contract of employment or insurance or a collective agreement;

(b) constitute a breach of any Act, regulation or municipal by-law;

(c) constitute an event of default or force majeure;

(d) give rise to a breach, termination, repudiation or frustration of any licence, permit or other right;

(e) give rise to any right to terminate or repudiate a contract, licence, permit or other right; or

(f) give rise to any estoppel.

No new cause of action

(6) A transfer does not create any new cause of action in favour of,

- (a) a holder of a debt instrument that was issued by a transferor before the transfer; or
- (b) a party to a contract with a transferor that was entered into before the transfer.

Transfer binding

(7) Despite any other Act that requires notice or registration of a transfer, a transfer is binding on the transfer recipient and all other persons.

Non-application of other Acts

(8) The *Land Transfer Tax Act* and the *Retail Sales Tax Act* do not apply to the transfer.

Transfer of property held for specified charitable purpose

(9) If a Minister's order transfers to a transfer recipient property that a transferor holds for a specified charitable purpose, the transfer recipient shall use it for the specified charitable purpose.

Application

(10) Subsection (9) applies whether the will, deed or other document by which the gift, trust, bequest, devise or grant is made, is executed before or after this section comes into force.

Regulations

(11) The Lieutenant Governor in Council may make regulations,

(a) prescribing contracts to which subsections (5) and (6) do not apply;

(b) prescribing Acts, in addition to those listed in subsection (8), that do not apply to the transfer.

No expropriation

(14) Nothing in this Part and nothing done or not done in accordance with this Part constitutes an expropriation or injurious affection for the purposes of the *Expropriations Act* or otherwise at law.

Immunity re transfer

(15) No proceeding for damages or otherwise shall be commenced against a director, officer or employee of a transfer or transfer recipient in respect of a claim arising in connection with a transfer.

Employees continued

42. (1) Persons who are employees of a transferor immediately before the transfer become employees of the transfer recipient as of the date of the transfer.

Same

(2) For all purposes, the employment of the employees described in subsection (1) immediately before and after the transfer is continuous.

Same

(3) For all purposes, including the purposes of an employment contract, a collective agreement and the *Employment Standards Act, 2000*, the employment of the employees described in subsection (1) is not terminated or severed and those employees are not constructively dismissed because of the transfer.

Terms of employment

(4) All rights, duties and liabilities relating to all employees and former employees of a transferor that are vested in or bind the transferor immediately before the effective date of the transfer are vested in or bind the transfer recipient instead of the transferor immediately after the transfer.

Application of s. 69 of *Labour Relations Act, 1995*

(5) A transfer is deemed to be a sale of a business under section 69 of the *Labour Relations Act, 1995* and that section applies to the transfer.

Note: Please confirm whether this will work if only a few employees are transferred and the LHIN still operates. S. 69 of the LRA also appears to apply to the sale of "part of" a business, so maybe this would work as if only "part" of the LHIN has been sold?

Pay Equity Act

(6) A transfer is deemed to be a sale of business under section 13.1 of the *Pay Equity Act* and that section is deemed to apply to the transfer.

*Note: Same as above - please confirm it works for partial transfers.
I think it might, but we may need additional rules or "with
necessary modifications" language to make it fit.*

Dissolution order

43. (1) The Minister may make an order to dissolve an organization that is listed in subsection 40 (2).

Dissolution of prescribed organization

(2) If the Minister makes an order under subsection (1), the organization affected by the order is dissolved as of the date specified in the order, despite any requirement that would otherwise apply under any other Act.

Members terminated

(3) The persons who are the members of the prescribed organization affected by the order immediately before the dissolution cease to be members on the day of the dissolution.

Directors terminated

(4) The terms of office of the directors and officers of the organization affected by the order who are in office immediately before its dissolution are terminated on the day of the dissolution.

Final annual report

(5) Despite the dissolution of an organization affected by an order, the chair and chief executive officer of the Super Agency shall prepare and deliver the annual report for every fiscal year of a prescribed organization affected by the order before its dissolution for which the annual report has not already been delivered.

Same

(6) For the purposes of subsection (5), if an organization affected by the order is dissolved in any year on a date other than March 31, its last fiscal year is deemed to be from the preceding April 1 to the date of its dissolution.

Other filings

(7) The chair and chief executive officer of the Super Agency shall make any other filings or reports that the organization may have made or that it would have been required to make immediately before its dissolution, and the chair and chief executive officer are deemed to have all the rights of a member, director or officer of the prescribed organization to make the filings or reports.

No change of control

(8) The dissolution of an organization affected by the order shall not constitute a change of control of the organization in respect of its assets, liabilities, rights or obligations.

Transfer of home care agreements with local health integration networks

[LSB Note to draft: We need to do more work on this to include more than just agreements, and more than home care].

44. (1) Despite anything in any other Act, but subject to the processes and requirements set out in this Part and any regulations made under this Part, the Minister may make an order transferring to a person or entity, including an integrated care delivery system, the liabilities, rights and obligations of a local health integration network set out in,

(a) an agreement made between the network and a service provider, within the meaning of the *Home Care and Community Services Act, 1994*, to have the service provider provide a community service; or

(b) an agreement under section 28.5 of the *Home Care and Community Services Act, 1994* to provide funding to or on behalf of a person.

Notification requirement

(2) Before the Minister makes an order under subsection (1), the Minister shall notify the affected person or entity and local health integration network.

Contents of order

(3) An order made under subsection (1),

(a) shall specify a date on which the transfer of assets, liabilities, rights, obligations or employees, as the case may be, takes effect; and

(b) may specify that issues arising out of the interpretation of the order be resolved by the method specified in the order.

Non-application of *Legislation Act, 2006*

(4) Part III (Regulations) of the *Legislation Act, 2006* does not apply to an order made under subsection (1).

Notice of order

(5) The Minister shall provide each affected person or entity and local health integration network with a copy of the order, and shall publish the order on a website .

Same, duties

(6) Each person, entity and local health integration network that receives a copy of an order provided under subsection (5) shall,

(a) provide notice of the order and make copies available to affected employees and their bargaining agents and to other persons or entities whose contracts are affected by the order; and

(b) publish the order on a website.

Definition

(7) In this section,

Note: I'm not completely sure about this, but I think it may be worth having a definition of a LHIN that would be proclaimed when LHSIA is eventually repealed.

Note: Do we need anything else set out in this Part to apply to these transfers? For instance, the other sections in this Part set out what happens when rights, obligations, and liabilities are assumed, and clarify what happens on the transfer of employees, etc. (which

presumably this doesn't involve)? Do any of the other rule sin this Part need to apply here?

Note: Presumably, this is going to require substantial amendments to the Home Care Act. Do we need to do anything about transferring community services that are directly provided by LHINS under Part VII.I of that Act?

PART IX MISCELLANEOUS

Public interest

45. In making a decision in the public interest under this Act, the Lieutenant Governor in Council, the Minister or the Super Agency, as the case may be, may consider any matter they regard as relevant including, without limiting the generality of the foregoing,

- (a) the quality of the management and administration of the Super Agency or the health service provider, as the case may be;
- (b) the proper management of the health care system in general;
- (c) the availability of financial resources for the management of the health care system and for the delivery of health care services;
- (d) the accessibility to health services in the geographic area or region where the health service provider is located; and
- (e) the quality of the care and treatment of patients.

No liability

45.01. (1) No proceeding for damages or otherwise, other than an application for judicial review under the *Judicial Review Procedure Act* shall be commenced against any of the following with respect to any act done or omitted to be done or any decision, directive, standard or order made or issued under this Act that is done in good faith in the execution or intended execution of a power

or duty under this Act:

1. The Crown.
2. The Minister.
3. The Super Agency.
4. Any member, director or officer of the Super Agency or an agent or a volunteer of the Super Agency.
5. Any person employed by the Crown, the Minister or the Super Agency.

No protection re negligent health service delivery

(2) Nothing in subsection (1) prevents a claim for compensation with respect to the delivery of services by the Super Agency or the delivery of services arranged by the Super Agency, and, for greater certainty, the Super Agency does not deliver services, and services are not arranged by the Super Agency, when the Super Agency funds services under section 27 to be delivered by a health service provider or integrated care delivery system.

PART XX

PATIENT OMBUDSMAN

Definitions

45.1 In this Part,

“proceeding” includes a proceeding held in, before or under the rules of a court, a tribunal, a commission, a justice of the peace, a coroner, a committee of a College within the meaning of the *Regulated Health Professions Act, 1991*, a committee of the Board of Regents continued under the *Drugless Practitioners Act*, a committee of the Ontario College of Social Workers and Social Service Workers under the *Social Work and Social Service Work Act, 1998*, an arbitrator or a mediator; (“French”)

“patient or former patient” includes,

- (a) a patient or former patient of a hospital,
- (b) a resident or former resident of a long-term care home,
- (c) a client or former client of a community care access corporation,
- (d) a person who receives or has received services from a local health integration network, but only with respect to matters described in clause (d) of the definition of "health sector organization" in subsection 1 (1)
- (e) any other individual provided for in the regulations, and
- (f) in respect of an individual mentioned in clause (a), (b), (c), (e) or (e) who is or was incapable with respect to a treatment or another matter, a person with the authority to consent to the treatment or the other matter on behalf of that patient or former patient in accordance with the *Health Care Consent Act, 1996*.

Patient ombudsman

45.2 (1) The Lieutenant Governor in Council shall appoint a person to be the patient ombudsman.

Functions of the patient ombudsman

(2) The functions of the patient ombudsman are,

- (a) to receive and respond to complaints from patients and former patients of a health sector organization and their caregivers, and from any other prescribed persons;
- (b) to facilitate the resolution of complaints made by patients and former patients of a health sector organization and their caregivers, and by any other prescribed persons;

(c) to undertake investigations of complaints made by patients and former patients of a health sector organization and their caregivers, and by any other prescribed persons, and to undertake investigations of health sector organizations on the patient ombudsman's own initiative;

(d) to make recommendations to health sector organizations following the conclusion of investigations; and

(e) to do anything else provided for in the regulations.

Employee of Super Agency

(3) The Super Agency shall employ as the patient ombudsman the person appointed by the Lieutenant Governor in Council and shall terminate that person's employment as patient ombudsman when the term of the appointment expires, or if the Lieutenant Governor in Council revokes the person's appointment.

Salary, etc.

(4) The Lieutenant Governor in Council shall fix the salary or other remuneration and the benefits, including rights relating to severance, termination, retirement and superannuation, of the patient ombudsman, and the Super Agency shall provide the salary or other remuneration and those benefits to the patient ombudsman.

Delegation

(5) The patient ombudsman may, in writing, delegate any or all of their powers to one or more employees of the Super Agency as the patient ombudsman considers appropriate, and where the patient ombudsman has done so, the acts of the delegate are deemed to be the acts of the patient ombudsman for the purposes of this Act.

Term of office

(6) The patient ombudsman shall be appointed for a term of five years and may be reappointed for one further term of five years.

Same

(7) The Lieutenant Governor in Council may revoke the

appointment of the patient ombudsman for cause.

Temporary appointment

(8) If the position of patient ombudsman is vacant or if for any reason the patient ombudsman is unable or unwilling to fulfil the duties of the office, the Lieutenant Governor in Council may appoint a temporary patient ombudsman for a term of up to six months.

Designation by patient ombudsman

45.3 (1) The Patient Ombudsman shall designate an individual from among the employees of the Super Agency who shall have the powers and duties of the Patient Ombudsman if the Patient Ombudsman is absent or unable to fulfil the duties of the office or if the office becomes vacant.

Designation in writing

(2) A designation under subsection (1) shall be in writing.

Powers and duties

(3) The individual designated under subsection (1) shall have the powers and duties of the Patient Ombudsman unless a temporary Patient Ombudsman is appointed.

Salary

(4) The Lieutenant Governor in Council may increase the salary of an individual who assumes the powers and duties of the Ombudsman under subsection (1) in such circumstances as the Lieutenant Governor in Council considers appropriate.

Removal or suspension

(5) Subsection 45.2 (7) (Same) applies in respect of an individual who assumes the powers and duties of the Patient Ombudsman under subsection (1).

Complaints

45.4 (1) Subject to any prescribed limitations with respect to time, a patient or a former patient of a health sector organization, a caregiver of a patient or former patient, and any other prescribed person, may make a complaint in writing to the patient ombudsman about actions or inactions of a health sector organization that relate,

- (a) in the case of a patient or former patient, to the care and health care experience of the patient or former patient;
- (b) in the case of a caregiver, to the care and health care experience of the patient or former patient to whom the caregiver provides or provided care; or
- (c) in the case of another prescribed person, to the care and health care experience of another person provided for in the regulations.

Facilitated resolution

(2) The patient ombudsman shall work with the patient, former patient, caregiver or other prescribed person, the health sector organization and, when appropriate, the relevant local health integration network, to attempt to facilitate a resolution of a complaint made under subsection (1) unless, in the opinion of the patient ombudsman,

- (a) the complaint relates to a matter that is within the jurisdiction of another person or body or is the subject of a proceeding;
- (b) the subject matter of the complaint is trivial;
- (c) the complaint is frivolous or vexatious;
- (d) the complaint is not made in good faith;
- (e) the patient, former patient, caregiver or other prescribed person has not sought to resolve the complaint directly with the health sector organization; or
- (f) the patient, former patient, caregiver or other prescribed person does not have a sufficient personal interest in the subject matter of the complaint.

Referral to appropriate body

(3) Where the complaint relates to a matter that is within the jurisdiction of another person or body, the patient ombudsman shall

refer the patient, former patient, caregiver or other prescribed person to that person or body.

Patient to be informed

(4) In any case where the patient ombudsman determines that they will not attempt to facilitate a resolution of a complaint in accordance with subsection (2), the patient ombudsman shall inform the patient, former patient, caregiver or other prescribed person in writing of that determination and state the reasons for that determination.

Investigation

45.5 (1) Where, after attempting to facilitate the resolution of a complaint under section 45.4, the patient ombudsman believes that the complaint should be investigated, the patient ombudsman may investigate the complaint.

May decide not to investigate

(2) Without limiting the generality of the powers conferred on the patient ombudsman by this Act, the patient ombudsman may, in the patient ombudsman's discretion, decide not to investigate, or, as the case may require, not to further investigate any complaint for any reason for which the patient ombudsman could have determined not to attempt to facilitate the resolution of the complaint under section 45.4.

Patient to be informed

(3) In any case where the patient ombudsman makes a determination not to investigate or further investigate a complaint, the patient ombudsman shall inform the patient, former patient, caregiver or other prescribed person in writing of that decision and state the reasons for that decision.

Investigations on own initiative

(4) The patient ombudsman may also commence an investigation of the actions or inactions of one or more health sector organizations that relate to the patient care or health care experience provided by the organization or organizations in any case where the patient ombudsman believes that the matter should be investigated.

Restriction

(5) Despite subsection (4), the patient ombudsman shall not commence an investigation under that subsection in connection with a matter that is within the jurisdiction of another person or body or is the subject of a proceeding.

Organization and patient to be informed

(6) Before investigating any matter, the patient ombudsman shall inform the relevant health sector organization and the patient, former patient, caregiver or other prescribed person, if any, who made the complaint that led to the investigation of the patient ombudsman's intention to make the investigation.

Investigations are private

(7) Every investigation by the patient ombudsman shall be conducted in private.

Exception, other persons and bodies

(8) Despite subsection (7), where the patient ombudsman obtains information in the course of an investigation that relates to a matter within the jurisdiction of another person or body, the patient ombudsman may provide that information to the other person or body.

Obtaining information, etc.

(9) The patient ombudsman may hear or obtain information from any persons he or she thinks fit, and may make any inquiries he or she thinks fit.

Opportunity to be heard

(10) The patient ombudsman is not required to hold any hearing and no person is entitled as of right to be heard by the patient ombudsman, but, if at any time during the course of an investigation, it appears to the patient ombudsman that there may be sufficient grounds for him or her to make any report or recommendation that may adversely affect any person or entity, the patient ombudsman shall give to that person or entity an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel.

Requiring information

(11) The patient ombudsman may from time to time require

any officer, employee, director, shareholder or member of any health sector organization, or any other person who provides services through or on behalf of a health sector organization, who, in the patient ombudsman's opinion, is able to give any information relating to any matter that is being investigated by the patient ombudsman,

- (a) to furnish the patient ombudsman with the information; and
- (b) to produce any documents or things that in the patient ombudsman's opinion relate to the matter and that may be in the person's possession or under the person's control.

Examination under oath

(12) The patient ombudsman may summon before the patient ombudsman and examine under oath,

- (a) any patient, former patient, caregiver or other prescribed person who has made a complaint under this Act; or
- (b) any person who is mentioned in subsection (11).

Certain other Acts

(13) A person who is subject to the *Freedom of Information and Protection of Privacy Act*, the *Municipal Freedom of Information and Protection of Privacy Act* or the *Personal Health Information Protection Act, 2004* is not prevented by any provisions in those Acts from providing personal information or personal health information to the patient ombudsman, when the patient ombudsman requires the person to provide the information under this section.

Privilege preserved

(14) Every person to whom this section applies has the same privileges in relation to the giving of information, the answering of questions, and the production of documents and things as witnesses have in any court.

Statements not admissible

(15) Except on the trial of any person for an offence in respect of the person's sworn testimony, no statement made or answer given by that or any other person in the course of any investigation by the patient ombudsman is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the patient ombudsman shall be given against any person.

Right to object to self-incrimination

(16) A person giving a statement or answer in the course of any investigation before the patient ombudsman shall be informed by the patient ombudsman of the right to object to answer any question under section 5 of the *Canada Evidence Act*.

Protection from liability

(17) No person is liable to prosecution for an offence against any Act, by reason of their compliance with any requirement of the patient ombudsman under this section.

Fees, allowances, etc.

(18) Where any person is required by the patient ombudsman to attend before the patient ombudsman for the purposes of this section, the person is entitled to the same fees, allowances and expenses as if the person were a witness in the Superior Court of Justice, and the provisions of any relevant Act, regulation or rule apply accordingly, with necessary modification.

Compliance

(19) Every person who is summoned by the patient ombudsman under this section, or is required to furnish or produce documents or information, shall comply with the summons or furnish or produce the documents or information, as the case may be.

Entry

(20) For the purposes of an investigation under this section, the patient ombudsman may at any time enter upon any premises of a health sector organization and inspect the premises.

Restriction

(21) Despite subsection (20), the patient ombudsman shall not

enter any premises of a health sector organization, except with the consent of the health sector organization or under the authority of a warrant issued under subsection (23).

Private dwellings

(22) Despite subsection (20), the patient ombudsman shall not enter any premises that is being used as a dwelling, except with the consent of the occupier or under the authority of a warrant issued under subsection (23).

Warrant

(23) A justice of the peace may issue a warrant authorizing the patient ombudsman or another person to enter any premises of a health sector organization if the justice is satisfied, on evidence under oath or affirmation, that there are reasonable grounds to believe that it is necessary to enter the premises for the purposes of an investigation under this section.

Obstruction forbidden

(24) No person shall, without lawful justification or excuse, wilfully obstruct, hinder or resist the patient ombudsman or a delegate of the patient ombudsman in the performance of their functions under this Act.

Recommendations

45.6 (1) After making an investigation, the patient ombudsman may make any recommendations to a health sector organization that was the subject of the investigation that the patient ombudsman sees fit.

Copy to patient

(2) Where the patient ombudsman makes recommendations to a health sector organization under subsection (1), the patient ombudsman shall also provide a copy of the recommendations to the patient, former patient, caregiver or other prescribed person who made the complaint, if any.

Personal information to be removed

(3) Subject to any prescribed exceptions, the patient ombudsman shall, before providing the copy of recommendations under subsection (2), ensure that all personal information and

personal health information about anyone other than the patient, former patient, caregiver or other prescribed person is redacted.

Reports by patient ombudsman

45.7 (1) The patient ombudsman/Super Agency shall report to the Minister on the activities and recommendations of the patient ombudsman at least annually, and otherwise as the patient ombudsman considers appropriate.

Reports to LHINs

(2) The patient ombudsman shall provide reports to local health integration networks on the activities of the patient ombudsman and their recommendations as the patient ombudsman considers appropriate.

No personal information

(3) The patient ombudsman and the Super Agency shall not include any personal information or personal health information in any reports made under this section.

Reports to be public

(4) The Super Agency shall make the reports under this section available to the public, through publication on the Agency's website and any other means the patient ombudsman may consider appropriate.

Application of Freedom of Information and Protection of Privacy Act

45.8 The Freedom of Information and Protection of Privacy Act does not apply to records in the Super Agency's custody or control that contain information obtained or prepared by the patient ombudsman in the course of conducting an investigation under this Part

Immunity

45.9 (1) No proceeding shall be commenced against the patient ombudsman or any employee of the Super Agency for any act done or omitted in good faith in the execution or intended execution of the patient ombudsman's functions under this Act.

Testimony

(2) Neither the patient ombudsman nor anyone employed by the Super Agency is a competent or compellable witness in a civil proceeding outside this Act in connection with anything done under sections.

Regulations

45.10 The Lieutenant Governor in Council may make regulations for the purposes of this Part,

(a) providing for additional functions of the patient ombudsman for the purposes of clause 45.2 (2) (e);

(b) further defining, specifying or clarifying the meaning of "patient or former patient" and similar expressions.

[may move this to general reg-making powers, especially since I don't think (a) is necessary]

PART X REGULATIONS

Regulations

46. (1) The Lieutenant Governor in Council may make regulations,

(a) [dissolving the Super Agency and doing anything necessary to effect the dissolution, including dealing with the assets and liabilities of the Super Agency by,

(i) providing for the liquidation or sale of the assets and paying the proceeds into the Consolidated Revenue Fund,

(ii) providing for a transfer of the assets or liabilities to the Crown or an agency of the Crown, or

(iii) providing for a transfer of the Super

Agency's employees to the Crown or an agency of the Crown;]

(b) specifying persons or entities that are excluded from the definition of "health service provider" in subsection 1 (2);

(c) governing and clarifying the application of subsection 9 (2) [restrictions]

(d) exempting the Super Agency, a health service provider or an integrated care delivery system from any provision of this Act or the regulations, and specifying circumstances in which the exemption applies;

(e) prescribing provisions of the *Corporations Act* and the *Corporations Information Act* or any successor to those Acts that apply to the Super Agency and the modifications with which those provisions are to so apply;

(f) specifying persons who may not be appointed as members of the Super Agency;

(g) governing consultation mechanisms under section 24;

(h) governing funding that the Super Agency provides to a health service provider or to an integrated care delivery system;

(i) requiring a health service provider to institute a system for reconciling the funding that it receives from the Super Agency on the basis set out in the regulation, including,

(i) requiring the service provider to pay the Super Agency for any excess payment of funding, and

(ii) allowing the Super Agency to recover any excess payment of funding by deducting the

excess from subsequent payments to the service provider;

(j) establishing the process for making a service accountability agreement under section 28 and governing the content or terms and conditions of such an agreement;

(k) respecting matters that relate to or arise as a result of a transfer of property under an integration decision under Part VI, including matters related to present and future rights, privileges and liabilities;

(l) defining, for the purposes of this Act, any word or expression used in this Act that has not already been expressly defined in this Act;

(m) respecting any matter that this Act describes as being prescribed or provided for in the regulations;

(n) governing transitional matters that may arise due to the enactment of this Act or any amendments made by the *Super Agency Establishment Act, 2019*;

(o) respecting any other matter that the Lieutenant Governor in Council consider necessary or desirable for carrying out the purposes and provisions of this Act.

Information and reports

(2) The Lieutenant Governor in Council may make regulations respecting the provision of information, other than personal health information, from prescribed persons and entities to the Super Agency in order to support collaboration between health service providers, integrated care delivery systems, physicians and others in the health care system, and to support planning of primary care services, including physician services, that ensure timely access and improve patient outcomes, including information to facilitate understanding by the Super Agency of,

(a) transitions in practice, including opening, closing, retirements and extended leaves; and

(b) practice and service capacity to address population health needs.

Minister's regulation

(3) The Minister may make regulations governing any matter that may be dealt with by regulation under section 15.

Conflict

(4) If there is a conflict between a regulation made under clause (1) (n) and any Act or any other regulation, the regulation made under that clause prevails, unless the Act or other regulation specifies that it prevails.

PART XI
AMENDMENTS TO THIS ACT

Amendments to this Act

47. (1) Paragraph 1 of the definition of "health service provider" in subsection 1 (2) of this Act is amended by striking out "or a private hospital within the meaning of the *Private Hospitals Act*" at the end and substituting "a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*".

Note: I'm trying to carry over outstanding amendments that would have been made to the comparable LHSIA provisions.

(2) Paragraph 15 of the definition of "health service provider" in subsection 1 (2) of this Act is repealed and the following substituted:

15. A community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017*.

Note: Is this the correct way to replace the new reference to independent health facilities in this definition?

(3) Subsection 6 (1) of this Act is repealed and the following substituted:

Other Acts

(2) The *Not-for-Profit Corporations Act, 2010* and the *Corporations Information Act* do not apply to the Super Agency, except as prescribed.

(4) Subsection 38 (4) of this Act is repealed and the following substituted:

Exceptions

(4) Subsection (3) does not apply to an integration that requires a decision of the Minister, a director or the executive officer under the *Oversight of Health Facilities and Devices Act, 2017* or the *Long-Term Care Homes Act, 2007*.

(5) Clause 46 (1) (e) of this Act is amended by striking out “the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010*”.

PART XII CONSEQUENTIAL AND RELATED AMENDMENTS

Note: As this project grows, it might make sense for most of these consequential amendments (but maybe not the self-amendment) to be moved into a separate Schedule.

Note: In an ideal world, we should also repeal any outstanding amendments to the Acts that we’re repealing. For example, there are numerous outstanding amendments to LHSIA that should also be repealed when LHSIA itself is repealed. However, I know that we have sometimes not done this in the past and just allowed the outstanding amendments to drop away, and the pace of this project might suggest that we may not have time to actually get around to these. I’ll leave this issue to be decided in a later draft.

Cancer Act

x. (1) The *Cancer Act* is repealed.

(2) A proclamation may provide for the repeal of different provisions of this Act on different dates.

Note: The Legislation Act allows us to selectively proclaim provisions of an Act, but that would limit us to proclaiming, for

example, this section's instruction to repeal the entire Cancer Act. It wouldn't allow us to only proclaim the repeal of certain parts of the Cancer Act. I tried to deal with this in subsection (2), above.

Another way of getting around this would be to structure this provision to include the repeals we want in separate subsections. For example, subsection (1) could repeal certain provisions of the Cancer Act, while subsection (2) could repeal the remainder of the Cancer Act, allowing you to cleanly do it in stages.

The approach I've set out comes with a significant drawback. If we're only going to repeal certain sections of the Cancer Act, the Cancer Act as a whole still needs to make sense at each stage. This means that, for example, we couldn't repeal certain sections of the Cancer Act by proclamation if other provisions of the Act directly cross-reference it or clearly rely on its continued existence.

It would be worth looking at the Acts you want to repeal in stages and determining what you want them to look like at each stage. You can use this to assess whether a repeal of the undesired provisions will be sufficient, or whether we're also going to need to amend the Acts to remove ineffective cross-references or otherwise deal with thorny transitional issues.

[removed the regulation revocations, which are probably more conveniently handled under their Act]

Excellent Care for All Act, 2010

*x. (1) The definitions of "caregiver", "council", "health sector organization", "local health integration network", "patient ombudsman", "personal information" and "personal health information" in section 1 of the *Excellent Care for All Act, 2010* are repealed.*

[is there a chance these will not all be repealed at the same time?]

(2) Subsections 8 (4) and (5) of the Act are repealed and the following substituted:

Copy to Agency

(5) Every health care organization shall provide a copy of its annual quality improvement plan to the [Super Agency] in a format

established by the Agency that permits province-wide comparison of and reporting on a minimum set of quality indicators.

(2) Sections 10 to 13.7 of the Act are repealed.

(3) Clauses 16 (1) (d) to (t.2) of the Act are repealed.

Note: I'm trying to repeal the related reg. powers here.

(5) A proclamation may provide for the repeal of different provisions of this A on different dates.

Local Health System Integration Act, 2006

x. (1) The *Local Health System Integration Act, 2006* is repealed.

(2) Ontario Regulation 417/06 (Committees of the Board of Directors of a Local Health Integration Network), made under the Act, is revoked.

(3) Ontario Regulation 162/07 (French Language Health Services Advisory Council), made under the Act, is revoked.

(4) Ontario Regulation 264/07 (General), made under the Act, is revoked.

(5) Ontario Regulation 515/09 (Engagement with the Francophone Community under Section 16 of the Act), made under the Act, is revoked.

(6) Ontario Regulation 456/16 (Health Shared Services Ontario), made under the Act, is revoked.

(7) A proclamation may provide for the repeal of different provisions of this Act or of any of these regulations on different dates.

Note: You indicated a desire to have LHINs continue to operate in a much more limited capacity after many of their functions have been transferred to the Super Agency. If this is the case, I think you will want to review the LHSIA Act to see which provisions still

need to be left in and which should be repealed or, possibly, amended. I think you'll probably want to immediately repeal the "Provincial strategic plan" section, which has now been moved over to the MOHLTC Act. But would you also want to repeal some or all of the Planning and Community Engagement, Integration and Devolution and Transfer of CCAC provisions? Would you want the LHINs to continue to have those functions even after they've been stripped of most of their staff? It may be possible to do this through staged repeals of different sections of the Act, but we may need to make some amendments to certain provisions to ensure that it still works or that it doesn't cross-reference non-existent provisions.

The purpose clause of LHSIA also stands out to me - it says that the Act is to provide for the "effective and efficient management of the health system at the local level by local health integration networks". It seems like that may no longer be the purpose of the Act after the LHINs have been stripped of most of their functions. Should it be changed during the interim phase when LHSIA still exists in a limited capacity?

Lung Health Act, 2017

x. (1) *The Lung Health Act, 2017 is repealed.*

(2) *A proclamation may provide for the repeal of different provisions of this Act on different dates.*

Public Hospitals Act

xx. *Subsection 32(1) of the Public Hospitals Act is amended by adding the following clause:*

(c.3) exempting a hospital or group of hospitals from any provisions of this Act or the regulations and prescribing any conditions that may apply to such exemption;

NTD: Further consequential instructions are TBD. I understand there will be amendments to references to agencies and the LHINs in other legislation, amendments related to the Patient Ombudsman, possible home care amendments, etc.

PART XX
COMMENCEMENT AND SHORT TITLE

Commencement

x. The Act set out in this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

Note: As above, it will be worth looking through this bill as it gets closer to completion and determining what you want it to look like at each "stage". It's possible that some provisions may need to be rewritten or revised (for instance, if a "stage 1" provision contains a cross-reference to a provision that won't come into force for a while, etc.)

Short title

x. The short title of the Act set out in this Schedule is the *Super Agency Act, 2019*.

SCHEDULE 2
MINISTRY OF HEALTH AND LONG-TERM CARE ACT

x. *The Ministry of Health and Long-Term Care Act is amended by adding the following sections:*

Provincial strategic plan

8.1 (1) The Minister shall develop a provincial strategic plan for the health system that includes a vision, priorities and strategic directions for the health system.

Councils

(2) The Minister shall establish the following councils:

1. An Aboriginal and First Nations health council to advise the Minister about health and service delivery issues related to Aboriginal and First Nations peoples and priorities and strategies for the provincial strategic plan related to those peoples.

2. A French language health services advisory council to advise the Minister about health and service delivery issues related to francophone communities and priorities and strategies for the provincial strategic plan related to those communities.

Members

(3) The Minister shall appoint the members of each of the councils established under subsection (2) who shall be representatives of the organizations that are prescribed.

Consultation

(4) In developing priorities and strategic directions for the health system in the provincial strategic plan, the Minister shall seek the advice of province-wide health planning organizations that are mandated by the Government of Ontario.

Note: Removed the reference to “the health system and the local health systems” that is currently included in LHSIA, as “local health systems” doesn’t seem to be as meaningfully defined

anymore.

This provision requires the advice of “province-wide health planning organizations”. Will that just be the Super Agency? Will other “province-wide health planning organizations” exist?

Adhering to French Language Services Act

(5) In developing priorities and strategic directions for the health system in the provincial strategic plan, the Minister shall ensure that the priorities and strategic directions foster the provision of health services in a way that meets the requirements of the *French Language Services Act*.

Publication

(6) The Minister shall publish the provincial strategic plan on a Government website.

unless you have a definite plan for transition, you may want to leave that to the regulations, given the difference between the LHINs consultations and province-wide ones]

2. Section 12 of the Act is amended by adding the following clause:

(0.b) prescribing organizations for the purposes of subsection 8.1 (3);

Note: I think this is necessary because the MOHLTC Act doesn't have a general power to make regulations for “anything that is prescribed”.

Commencement

3. This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.